Nos. 318, 319 & 320.

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MISSISSIPPI TAX CASES.

Supreme Court of the United States.

OCTOBER TERM, 1899.

ILLINOIS CENTRAL RAILROAD COMPANY,
Appellant,
vs.
WIRT ADAMS, State Revenue Agent, *et al.*
No. 318.

Filed April 16, 1900.

ILLINOIS CENTRAL RAILROAD COMPANY,
Appellant,
vs.
WIRT ADAMS, State Revenue Agent, *et al.*
No. 319.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY,
Appellant,
vs.
WIRT ADAMS, State Revenue Agent, *et al.*
No. 320.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

MEMORANDUM FOR APPELLANTS AS TO AMOUNTS IN CONTROVERSY.

WILLIAM D. GUTHRIE,
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JAMES FENTRESS,
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WASHINGTON, April 16, 1900.

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Supreme Court of the United States.

OCTOBER TERM, 1899.

ILLINOIS CENTRAL RAILROAD COMPANY, *Appellant*, *vs.* WIRT ADAMS, State Revenue Agent, *et al.*	No. 318.
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APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

MEMORANDUM FOR APPELLANTS AS TO AMOUNTS IN CONTROVERSY AS AFFECTING JURISDICTION OF THE CIRCUIT COURT.

The brief filed in these three cases on behalf of certain appellees urges that the amount in controversy in each of these suits is not sufficient to sustain the jurisdiction of the circuit court. No such point was made in the court below, nor does any such question of jurisdiction appear upon the certificates in the records. But aside from this,

and upon the merits of the claim, it is seen to be altogether fictitious by a mere inspection of the record in each case.

In No. 318 the state revenue agent and the state railroad commission were made defendants, and the bill of complaint alleged that the railroad commission was about to make an assessment for taxes and that the revenue agent was about to proceed to collect such taxes, amounting to "a large sum, much more than twenty thousand dollars ($20,000)," and to enforce the lien therefor by sale of the complainant's property (record, pp. 20, 21); and the prayer was for a decree restraining the railroad commission from approving or certifying the assessment, and restraining the revenue agent from bringing suit for such taxes, and also that the contract of exemption be declared to be valid and binding, and that the assessment for such taxes be decreed to be void (*id.*, pp. 26, 27).

In No. 319 the revenue agent and the railroad commission were also made defendants, and the bill alleged that the proceedings of the railroad commission sought to be enjoined covered taxes for the years 1886 to 1891, inclusive, the assessment amounting to more than $50,000 (record, p. 22); that the taxes upon such assessment amounted to about the sum of $60,000 (*id.*, p. 29), and that the cloud cast upon the title by the assessment therefor would cause injury to the amount of $60,000 or $70,000 (*id.*, p. 32); and the prayer was for an injunction against the certification of such assessment, and against any suit or proceedings by the revenue agent for the recovery of judgment for said taxes, and also for a decree that the contract in the charter of the Natchez and Jackson Railroad Company be declared valid and binding, and that the assessment be decreed to be void (*id.*, pp. 33, 34).

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In No. 320 the state revenue agent and the sheriffs of the counties through which the complainant's road runs were made defendants, and the bill alleged that the amount of taxes in dispute exceeded $100,000, and exceeded the sum of $2,000 in each of the counties (record, p. 10). The prayer of the bill was for an injunction against any suit for the recovery of the taxes and also for a decree that the complainant's liability for such taxes had been fully discharged, and removing the cloud from its title (*id.*, p. 13).

It will thus be seen that the object of each suit was to prevent the state revenue agent, the principal defendant, from bringing suit upon the assessment made or to be made by the railroad commission and also to prevent the cloud upon title which would be caused by the approval and certification of that assessment to the local collectors in the counties. That this was the true purpose is demonstrated by the fact that the revenue agent brought such suits the moment he deemed himself freed from the injunction orders originally granted by the circuit court (see affidavits of appellee on motions to dismiss appeals). The assessments of the railroad commission in each case many times exceeded the jurisdictional amount, and, as between the complainant in each case and the revenue agent and the railroad commission, constituted the matter in dispute. The case is clearly distinguishable from those cases where a distinct and separable assessment not amounting to $2,000 has been made in each of several counties, and it has been attempted to join the local collectors in one suit so as to make out the jurisdictional limit by uniting the amounts of the various assessments. In such cases this court has held that, inasmuch as a payment under protest

in each county would only result in a cause of action for less than the jurisdictional amount in each case, the assessments in different counties cannot be united so as to confer jurisdiction. Here, under the act of 1894, the state revenue agent was expressly empowered "to proceed by suit . . . for all past due and unpaid taxes . . . where the State or any county, municipality or levee board has the right of action or may sue."[1] He also has express power "to sue for, collect and have assessed as herein required, delinquent taxes" for past years back to 1886.[2] Proceeding under this authority, the revenue agent, as shown by the records in Nos. 244 and 324, in the former case united in one declaration and one suit as one cause of action, the taxes for all the counties through which the Louisville, New Orleans and Texas Railway runs, in one instance joining the taxes for the years 1893 and 1894, and in the latter suit has united not only the taxes for all the towns and cities,

[1] SEC. 2. The State Revenue Agent may appoint a sufficient number of deputies. He shall have power and it shall be his duty to proceed by suit in the proper court against all officers, county contractors, persons, corporations, companies and associations of persons for all past due and unpaid taxes of any kind whatever, for all penalties or forfeitures for all past due obligations and indebtedness of any character whatever owing to the State or any county, municipality or levee board, and for damages growing out of the violation of any contract with the State or any county, municipality or levee board. He shall have a right of action and may sue at law or in equity in all cases where the State or any county, municipality or levee board has the right of action or may sue. It is the duty of the State Revenue Agent to investigate the books, accounts and vouchers of all fiscal officers of the State, and of every county, municipality and levee board, and to sue for, collect and pay over all money improperly withheld from either, and he has the power to sue and right of action against all such officers and their sureties to collect any such moneys; but if the delinquency appear by a correct open account on the books of the proper accounting officer, the right of the Revenue Agent to sue shall arise only after he has given thirty days' notice to the delinquent officer to pay over the amounts and he fails to do so (Laws of Mississippi of 1894, c. 34, p. 29).

[2] SEC. 6. The Revenue Agent shall have power to sue for, collect and have assessed as herein required, delinquent taxes or taxes that have escaped the assessor and collector back to and including the year 1886, and no further (Laws of Mississippi of 1894, c. 34, p. 29).

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but all of such taxes for many different years. It is such a proceeding that is sought to be enjoined, and in this view there should be no question or doubt that the matter in dispute in each of the suits far exceeds the sum of two thousand dollars.

Under the Code of Mississippi of 1892, the members of the state railroad commission act as railroad appraisers and assess railroad property.[1] This assessment, after opportunity for objection and after approval, is sent to the various counties for collection.[2] It is the assessment as a whole and the collection thereof by the revenue agent under the laws here quoted that are sought to be restrained in these suits.

Tested by the rules referred to in *Walter* v. *Northeastern Railroad Co.*, 147 U. S. 370, 372, it is evident that the amount in controversy in these suits is sufficient to support the jurisdiction of the circuit court. In the event of decrees upon the merits in favor of the complainants, the revenue agent would be restrained in each case from suing upon the whole claim for taxes, which far exceeds the jurisdictional amount, and from taking other proceedings for their collection or enforcement; and there would also

[1] 3877. *Assessment and taxation of railroads; state railroad assessors.*—The members of the railroad commission are constituted state railroad assessors, and they shall, upon the receipt or making and completion of the schedules provided for in the last two sections, assess all railroads, telegraph, sleeping-car, and express company property liable to taxation in the state, affixing its true value, so that such property shall bear its just proportion of taxation, taking into consideration the value of the franchise, the capital stock engaged in the business in this state; and the railroad assessors may adopt other and further rules necessary and proper to ascertain the value of property to be assessed by them, including the amount of capital engaged in the business in this state.

[2] 3882. *The same; assessments sent to the counties.*—So soon as the assessment-rolls have remained subject to objection for one month, and when all objections, if any, are disposed of, the assessment-rolls shall be approved either by order of the railroad commission or by operation of law, and the same shall be sent to the clerks of the boards of supervisors of the respective counties, who shall file and preserve the same as a record.

be decrees that there was no liability for the taxes and removing the cloud on the title arising from the assessment. In Nos. 318 and 319, there would also be decrees declaring the validity of the contracts contained in the charters involved in those cases. Such decrees would undoubtedly be entire as against the revenue agent and the railroad commission, and it would be impossible to say that as to any defendant in Nos. 318 and 319 any distinct or separable relief was granted which involved a matter of less than two thousand dollars. In No. 320, where the sheriffs of the counties are joined as defendants, the relief granted as to the revenue agent would involve the whole matter in dispute between the parties and would sustain the jurisdiction. As to the revenue agent, the decree in each case will be several and distinct; and as to the railroad commission, the decree will also be several and distinct, involving an assessment which at the bringing of the suit had not been yet parceled out between the different counties, and the separation, certification and approval of which it is the main object of the suit to prevent. Even in No. 320, there was at the bringing of the suit no separate enforceable claim on the part of the different sheriffs against the railroad company, and, therefore, there was no separate or distinct liability to injunction on the part of these same officials. If the joinder of these collectors might have the effect to make the liability distinct as to them, yet as to the revenue agent the liability would still be entire and sufficient to sustain the jurisdiction, and the bill may be retained for relief against him.

Applying the test mentioned in *Walter* v. *Northeastern Railroad Co.*, *supra*, if the amount of the taxes included in the assessment by the railroad commission

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had been paid to the revenue agent under protest, the complainants would not, and probably could not, have brought separate actions for its recovery. The right of action in such a case, arising upon a distinct and indivisible transaction, would result in only one suit, and that suit would be based upon the whole amount of the payment thus made.

The cases are entirely different from *Fishback* v. *Western Union Telegraph Co.*, 161 U. S., 96, 98, 101, where, after the actual making of the assessment and its certification to the several county officers, and its listing by them, it was claimed that the joinder of the state railroad commission conferred jurisdiction to restrain the enforcement of the assessment as a whole. Such an attempt resembled rather a proceeding by way of *certiorari* to review an assessment than a suit in equity for an injunction or other relief. Here, the very purpose of the suits is to restrain what had already been accomplished in the *Fishback* case, namely, the splitting up of the assessment and its certification to the different counties, and the consequent cloud upon the title caused thereby. This distinction was pointed out and approved by Barr, J., in *Western Union Tel. Co.* v. *Norman*, 77 Fed. Rep. 13, 20, where it was said, referring to the *Fishback* and the *Walter* cases:

> "In both of these cases it was sought to enjoin the collection of local taxes which had been assessed and levied by the respective counties and municipalities. Hence the local taxes had been distinctly separated, so that a separate action could have been maintained against the counties and municipalities, if the taxes had been paid under protest. Here it is sought to prevent the auditor from completing the appraisement and levy of taxes, which, if completed without legal authority, would be a wrongful act, and one probably subjecting him to an action by the party injured thereby."

The same conclusion was reached in *Western Union Tel. Co.* v. *Poe*, 61 Fed. Rep. 449, where an injunction was sought to restrain the state board of appraisers from making an assessment, which, when distributed, would not amount to two thousand dollars in any one county. Taft, J., said (pp. 453, 454):

> "What is here sought to be enjoined is the certificate by the board of appraisers to the county auditors of the amounts to be assessed against plaintiff. The auditors are then, by law, required to place the same upon the tax duplicate, and deliver the duplicates to the county treasurers as warrants for the collection of the taxes. The duties of the county auditors and treasurers in this matter are wholly ministerial. The law reposes in them, no discretion whatever, to reduce or modify the assessment. . . .
>
> "Again, it is urged that the affidavits filed show conclusively that in no single county will the assessment against the complainant amount to $2,000; wherefore the argument is that the jurisdiction of this court cannot be supported by adding together the amounts due in each county. If my conclusion is correct, that this action will lie against the board of appraisers, *there is nothing whatever in this objection, because the amount involved in controversy in the suit is the whole amount to be certified by the board under the law, less the aggregate amount which the complainant must pay in the various counties of Ohio, under such laws as are in force if the Nicholls law is not valid.* That difference admittedly exceeds $2,000. For this reason, I am of the opinion that the bill does present a case for equitable relief in a federal court."

The same result was also reached in the similar case of *Adams Express Co.* v. *Poe*, 61 Fed Rep. 470, 472; and this case ultimately came to this court and was heard and decided on the merits of the federal question involved (*Adams Express Company* v. *Ohio*, 165 U. S. 194, 199, 219).

The proceedings of the revenue agent and of the railroad commission which it is sought to restrain therefore involve a sum many times the amount limiting jurisdic-

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tion in the circuit court; and the bills, which seek to prevent or remove the cloud upon title caused by the assessments, and to obtain decrees declaring the validity of the contracts, call for decrees upon matters far in excess of the statutory limit.

Washington, April 16, 1900.

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For the appellants.

JAMES FENTRESS,
J. M. DICKINSON,
Of counsel.

No. 319 Sep. 78
Ill. C. R. R. Co. vs. Guthrie, Fentress & Mayes
Mississippi Tax Cases.
For Appt. (mo.
CHAS. SUMNER
FEB 1, 1900
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MAR 24 1900
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 319.
Filed Mar. 24, 1900.

ILLINOIS CENTRAL RAILROAD COMPANY,
Appellant,
vs.
WIRT ADAMS, State Revenue Agent, *et al.*

Appeal from the Circuit Court of the United States for the Southern District of Mississippi.

MEMORANDUM FOR APPELLANT IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

For the fifth time in this litigation, and within a period of less than one year, this court is asked to summarily dismiss another of these cases or to affirm the decree below without a hearing in court. The other four motions for the same relief, made in Nos. 244, 318, 320 and 324, were all postponed to the hearing of those cases upon the merits. No. 244 is now expected to be reached for argument during the week beginning April 9, 1900, and the above-entitled case and Nos. 318, 320 and 324 have, upon the motion of the appellants and plaintiffs in error, been advanced for hearing after No. 244. Under these circumstances, it is submitted that there is no necessity for haste or for an examination of the questions involved in the appeal without oral argument only two weeks in ad-

vance of the time when, as now set down, the appeal will be regularly argued.

The questions presented as to the jurisdiction of this court and as to the merits do not differ in substance from those involved in Nos. 318 and 320, and have twice been fully submitted to the court. The jurisdiction of this court is clear, the certificate of the judge who held the Circuit Court being conclusive upon this point (record, pp. 136, 140). Nor upon the merits does there seem to be any real doubt of the jurisdiction of the Circuit Court, which was based not only upon diverse citizenship (*id.* p. 1), but also upon the fact that the suit arose under the Constitution of the United States, inasmuch as the state legislation under which the defendants acted was claimed to impair contract rights in violation of section 10 of Article I. of the Constitution, and such action was also claimed to amount to a deprivation of property without due process of law and to a denial of the equal protection of the laws, in violation of the Fourteenth Amendment (*id.* pp. 20, 21, 24, 30, 32). The Circuit Court of Appeals in this case held in effect that the Circuit Court had jurisdiction (*Illinois Cent. R. Co.* v. *Adams*, 93 Fed. Rep. 852, 856).

As to the effect of the subsequent suit and judgment in the state court as a bar to the further prosecution of this appeal, it is only necessary to say that such an application of the rule of *res adjudicata* would permit the state court, by hastening its judgment, to nullify the jurisdiction and power of this court upon an appeal regularly taken to it and now pending here, and deny to litigants the benefit and protection of the federal courts in a case properly within the scope of federal jurisdiction.

It can hardly lie with the appellees to suggest that the

questions presented are "frivolous," for an argument of 109 printed pages is submitted in support of the motions, and it has been found necessary to cite over two hundred authorities. We cannot think that the court will dismiss or affirm without oral argument in any case where so extended and elaborate a discussion is required, and where there can be no well-founded claim that the appeal was taken for delay.

These motions should therefore be postponed to the hearing upon the merits, which should take place within the next two or three weeks.

Washington, March 26, 1900.

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EDWARD MAYES,
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